IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4774 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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KHENGARBHAI RUPAJIBHAI PRAJAPATI

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 4774 of 2002

MR HR PRAJAPATI for Petitioner No. 1

MR MR PRAJAPATI for Petitioner No. 1

MR HH PATEL Ld. AGP for Respondent No. 1-3

CORAM : MR.JUSTICE C.K.BUCH

Date of decision: 09/07/2002

ORAL JUDGEMENT

The petitioner has challenged the legality and validity of the order of detention passed by the Police Commissioner, Surat City dated 5.4.2002 in exercise of powers under sec. 3 of the Gujarat Prevention of

Anti-Social Activities Act, 1985 (hereinafter referred to the as "PASA Act") in this petition under Article 226 of the Constitution of India.

The petitioner has been branded as bootlegger as he was found involved in a criminal offence registered with Varachcha Police Station for the offence under the Bombay Prohibition Act. In the said incident, 69 bottles worth Rs. 17,250/ were seized from the Auto Rickshaw and cash of Rs. 560/ was also recovered. The Auto rickshaw was intercepted on information and the material was seized. The detaining authority, in the grounds for detention has record the entire incident and has also considered that the petitioner had absconded from the spot and the rickshaw was intercepted.

According to the detaining authority, the petitioner is dangerous person and his activity of bootlegging is affecting adversely to the public order. Two witnesses has stated about the activity of the detenu and their statements have been verified by the detaining authority. It is submitted that prior to the date of the offence registered with the Varachcha Police station on 13.3.2002, the petitioner was never found involved in any offence punishable under the Bombay Prohibition Act and this is a solitary case registered against him. There was no reason either for the petitioner or any of his family members or friends to give threats to any of the person including the witnesses whose statements are recorded on 15.1.2002 or 20.2.2002. On 30.3.2002 after the registration of the offence this story seems to have been created. There could not be any reason for the petitioner to give threats posing himself as a bootlegger without evaluating the contents of the statements recorded by the police and verified by the detaining authority. It could be inferred from the bunch of the papers served to the detenu along with the grounds of detention that the alleged activities of the petitioner cannot be said to be dangerous and prejudicial to the maintenance of public order.

The distinction between the law and order and public order has been drawn in more than one case by the Apex Court and the same has been considered by this Court The quantity of the liquor found from the auto rickshaw intercepted, is a big stock of prohibited liquor, however, this incident itself or collectively with the facts reflected from the statements of the witnesses relied on by the detaining authority would not changed the gravity and the compass of the activity. This can be said to be an activity adversely affecting the law and

order and not the public order. On this sole ground, the detention order can be turned down.

If the court is not satisfied with the subjective satisfaction recorded by the detaining authority as legal and proper on facts matrix, it would not be legal to say that the powers exercised under sec. 3 of the PASA Act is proper exercise of powers. Such order of detention is not sustainable and, therefore, the same is requires to be quashed and set aside.

In the result, this petition is allowed. The impugned order of detention dated 5.4.2002 passed by Police Commissioner, Surat City is hereby quashed and set aside. The detenu is ordered to be set at liberty forthwith, if he is not required to be detained in any other case. Rule is made absolute. Direct service permitted.

(C.K. BUCH, J.)

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